

This letter discusses issues of documenting sales for resale (86 Ill. Adm. Code 130.1405) and the enterprise zone manufacturing machinery and equipment exemption (86 Ill. Adm. Code 130.1951(g)(11)(A)). (This is a GIL.)

December 18, 2003

Dear Xxxxx:

This letter is in response to your letter dated July 11, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

The purpose of this letter is to request elaboration on two points expressed in the private letter ruling issued to us on December 19, 2002 on behalf of our client ABC. This request for elaboration seeks your confirmation of ABC's plan for documenting the relevant Illinois sales tax exemptions discussed in the private letter ruling.

Re: documenting the re-sale exemption from ROT on steam sold by ABC to XYZ.

The private letter ruling stated in response to question one that ABC should only incur Retailers Occupation Tax on the steam that is actually used or consumed by XYZ and not on the steam that cools and becomes condensate that can be resold by XYZ. Specifically, the ruling recites:

However, you have indicated that at least some portion of the material that is sold as steam is not 'used' or 'consumed.' This steam eventually cools and becomes condensate. The condensate is then 'resold.' When this is the case, it is the Department's position that only the steam that is 'used' or 'consumed' will be subject to sales tax. The portion of the steam that cools and becomes condensate that can be 'resold' by XYZ would not be

subject to sale tax when sold by ABC. However, when XYZ sells the condensate at retail, Retailers' Occupation Tax will be due.

The following paragraphs describe the procedures that ABC proposes to follow with respect to its monthly sales tax returns in order to ensure that those returns report sales tax only on the amount of steam 'used' or 'consumed' by XYZ.¹

1. ABC will register as a taxpayer under the Retailers' Occupation Tax Act.
2. ABC will file a Retailers' Occupation Tax return by the twentieth of each month.
3. On each monthly return, ABC will report the gross sale price of the steam that it sold to XYZ during the previous calendar month.
4. On each monthly return, ABC will also deduct a specific percentage of the gross sale price of the steam sold to XYZ. This percentage will represent the amount of steam that was sold by ABC to XYZ for resale rather than for use or consumption.
5. The resale percentage, alluded to in Par 4, will be calculated by dividing the amount of water in the form of condensate that XYZ expects the purchased steam to produce in its condensers after the steam is used to power XYZ's turbines and generators by the amount of water that was originally heated by ABC to produce the purchased steam that ABC sold to XYZ.
6. The resale percentage will be specified on an exemption certificate submitted by XYZ to ABC before the first sale of steam occurs. That exemption certificate will establish the percentage for all monthly tax returns of ABC until it is amended by XYZ. As operating characteristics of XYZ's plant change from time to time, altering the ratio of water in the form of condensate produced in XYZ's condensers to water heated by ABC to produce steam, XYZ will amend its resale exemption certificate accordingly.

We ask that you provide us with confirmation that the above procedures will be acceptable to the Department to document the resale exemption for ABC.

RE: documenting the application of the expanded manufacturing machinery and equipment exemption from the ROT on coal purchased by ABC from its coal vendor.

The private letter ruling also stated in response to question three that since ABC has been certified by the Department of Commerce and Community Affairs and is located in an enterprise zone, it may purchase the fuel that it uses to manufacture the high pressure steam and Type C fly ash free of sales tax. This is an application of the Expanded Manufacturing Machinery and Equipment exemption. We are not aware of any specific form of exemption certificate specified in the Illinois sales tax statutes or regulations that ABC should tender to its coal vendor. However, ABC did receive a certification document under 35 ILCS 120/1 f from the Department of Commerce and Community Affairs. Therefore, we propose that before the first purchase of coal by ABC following the creation of XYZ, ABC will provide the coal vendor with a copy of that certification document.

We ask that you provide us with confirmation that the coal vendor may rely on that certification document from the Department of Commerce and Community Affairs to support making tax free coal sales to ABC.

Accordingly, please feel free to contact with any questions or comments you may have.

In regard to the procedure you have set forth for documenting the sale for resale of steam, that procedure is acceptable in accordance with the Department's regulations at 86 Ill. Adm. Code 130.1405.

In regard to the procedure for documenting the enterprise zone manufacturing machinery and equipment exemption, the Department's regulation at 86 Ill. Adm. Code 130.1951(g)(11)(A) provides:

"11) Exemption Certification

A) When a certified business enterprise (or the lessor to a certified business enterprise) initially purchases qualifying items from an Illinois registered supplier, the supplier must be provided with:

i) a copy of the current certificate of eligibility issued by the Department of Commerce and Community Affairs; and

ii) a written statement signed by the certified business enterprise (or its lessor) that the items being purchased will be used or consumed (or leased for use or consumption) in a manufacturing or assembling process at a location in an enterprise zone established under the authority of the Illinois Enterprise Zone Act. (Sections 1d, 1e, 1f and 5k of the Act)"

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk

¹ For your information, it now appears that the actual legal identity of the company referred to as 'XYZ' in the original private letter ruling will be AAA. For clarity, we will continue to refer to the company in this letter as 'XYZ.'